



WISCONSIN REGULATORY DIGEST

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Law Will Protect Whistleblowers Against Retaliation

The state will protect health care industry whistleblowers from retaliation by their employers under legislation signed by Gov. Tommy Thompson.

The law also allows health care workers who believe they were disciplined for reporting possible violations to file discrimination complaints with the state.

Thompson said, "although Wisconsin is already at the forefront of health care, the law will further improve patient care by giving workers the protection they need to speak out when they see problems."

"This bill strengthens the laws already in place to protect health care users, and it does so with minimal cost," Thompson said.

Employers found to have unfairly disciplined doctors, nurses, pharmacists, social workers and other health care workers face up to \$10,000 in civil fines under the new law.

It also gives health care workers the same right to file discrimination complaints as state employees who feel their supervisors have retaliated against them.

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Under 1999 WI Act 176, retaliation includes being fired or switched to a different shift, reprimanded or threatened.

Gina Dennik-Champion, a spokeswoman for the Wisconsin Nurses Association, said the law also requires health care providers to post information on whistleblower protections and include it in their orientation for new workers.

"A lot of times, they use the chain of command and they keep telling them 'We'll fix it, we'll fix it' and it doesn't get fixed," Dennik-Champion said. "It just kind of goes nowhere. The concern still exists."

Scott Peterson, spokesman for the Wisconsin Health and Hospital Association, said the health care industry sees the law as another step to improve patient care.

"We're not going to achieve the high levels of quality that the public is demanding without the help of our employees," Peterson said.

1999 WISCONSIN ACT 176 Whistleblower Law

AN ACT *to amend* 111.322 (2m) (a) and 111.322 (2m) (b); and *to create* 106.06 (6), 146.997 and 230.45 (1) (L) of the statutes; **relating to:** disciplinary action against an employe of a health care facility or a health care provider who reports a violation of the law or a violation of a clinical or ethical standard by the health care facility or health care provider or by an employe of the health care facility or health care provider and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 106.06 (6) of the statutes is created to read:

106.06 (6) The division shall receive complaints under s. 146.997 (4) (a) of disciplinary action taken in

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violation of s. 146.997 (3) and shall process the
complaints in the same manner that employment
discrimination complaints are processed under s. 111.39.

SECTION 2. 111.322 (2m) (a) of the statutes is
amended to read:

111.322 (2m) (a) The individual files a complaint or
attempts to enforce any right under s. 103.02, 103.10,
103.13, 103.28, 103.32, 103.455, 103.50, 104.12, 109.03,
109.07 or, 109.075 or 146.997 or ss. 101.58 to 101.599 or
103.64 to 103.82.

SECTION 3. 111.322 (2m) (b) of the statutes is
amended to read: 111.322 (2m) (b) The individual
testifies or assists in any action or proceeding held under
or to enforce any right under s. 103.02, 103.10, 103.13,
103.28, 103.32, 103.455, 103.50, 104.12, 109.03, 109.07
or, 109.075 or 146.997 or ss. 101.58 to 101.599 or 103.64
to 103.82.

SECTION 4. 146.997 of the statutes is created to read:

146.997 Health care worker protection. (1)
DEFINITIONS. In this section:

(a) “Department” means the department of
workforce development.

(b) “Disciplinary action” has the meaning given in s.
230.80 (2).

(c) “Health care facility” means a facility, as defined
in s. 647.01 (4), or any hospital, nursing home,
community-based residential facility, county home,
county infirmary, county hospital, county mental health
complex, tuberculosis sanatorium or other place licensed
or approved by the department of health and family
services under s. 49.70, 49.71, 49.72, 50.03, 50.35, 51.08,
51.09, 58.06, 252.073 or 252.076 or a facility under s.
45.365, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.

(d) “Health care provider” means any of the
following:

1. A nurse licensed under ch. 441.
2. A chiropractor licensed under ch. 446.
3. A dentist licensed under ch. 447.
4. A physician, podiatrist or physical therapist
licensed under ch. 448.
5. An occupational therapist, occupational therapy
assistant, physician assistant or respiratory care
practitioner certified under ch. 448.
6. A dietician certified under subch. V of ch. 448.
7. An optometrist licensed under ch. 449.
8. A pharmacist licensed under ch. 450.
9. An acupuncturist certified under ch. 451.
10. A psychologist licensed under ch. 455.
11. A social worker, marriage and family therapist or
professional counselor certified under ch. 457.
12. A speech-language pathologist or audiologist
licensed under subch. II of ch. 459 or a speech and
language pathologist licensed by the department of public
instruction.
13. A massage therapist or bodyworker issued a
license of registration under subch. XI of ch. 440.

14. An emergency medical technician licensed under
s. 146.50 (5) or a first responder.

15. A partnership of any providers specified under
subds. 1. to 14.

16. A corporation or limited liability company of any
providers specified under subds. 1. to 14. that provides
health care services.

17. An operational cooperative sickness care plan
organized under ss. 185.981 to 185.985 that directly
provides services through salaried employees in its own
facility.

18. A hospice licensed under subch. IV of ch. 50

19. A rural medical center, as defined in s. 50.50
(11).

20. A home health agency, as defined in s. 50.49 (1)(a).

(2) REPORTING PROTECTED. (a) Any employe
of a health care facility or of a health care provider who is
aware of any information, the disclosure of which is not
expressly prohibited by any state law or rule or any
federal law or regulation, that would lead a reasonable
person to believe any of the following may report that
information to any agency, as defined in s. 111.32 (6) (a),
of the state; to any professionally recognized accrediting
or standard-setting body that has accredited, certified or
otherwise approved the health care facility or health care
provider; to any officer or director of the health care
facility or health care provider; or to any employe of the
health care facility or health care provider who is in a
supervisory capacity or in a position to take corrective
action:

1. That the health care facility or health care provider
or any employe of the health care facility or health care
provider has violated any state law or rule or federal law
or regulation.

2. That there exists any situation in which the quality
of any health care service provided by the health care
facility or health care provider or by any employe of the
health care facility or health care provider violates any
standard established by any state law or rule or federal
law or regulation or any clinical or ethical standard
established by a professionally recognized accrediting or
standard-setting body and poses a potential risk to public
health or safety.

(b) An agency or accrediting or standard-setting
body that receives a report under par. (a) shall, within 5
days after receiving the report, notify the health care
facility or health provider that is the subject of the report,
in writing, that a report alleging a violation specified in
par. (a) 1. or 2. has been received and provide the health
care facility or health care provider with a written
summary of the contents of the report, unless the agency,
or accrediting or standard-setting body determines that
providing that notification and summary would
jeopardize an ongoing investigation of a violation alleged
in the report. The notification and summary may not
disclose the identity of the person who made the report.

(c) Any employe of a health care facility or health
care provider may initiate, participate in or testify in any

action or proceeding in which a violation specified in par. (a) 1. or 2. is alleged.

(d) Any employee of a health care facility or health care provider may provide any information relating to an alleged violation specified in par. (a) 1. or 2. to any legislator or legislative committee.

(3) DISCIPLINARY ACTION PROHIBITED. (a) No health care facility or health care provider and no employee of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person because the person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2) (d) or because the health care facility, health care provider or employee believes that the person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2)(d).

(b) No health care facility or health care provider and no employee of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person on whose behalf another person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2)(c) or provided in good faith any information under sub. (2) (d) or because the health care facility, health care provider or employee believes that another person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2) (d) on that person's behalf.

(c) For purposes of pars. (a) and (b), an employee is not acting in good faith if the employee reports any information under sub. (2) (a) that the employee knows or should know is false or misleading, initiates, participates in or testifies in any action or proceeding under sub. (2)(c) based on information that the employee knows or should know is false or misleading or provides any information under sub. (2) (d) that the employee knows or should know is false or misleading.

(4) ENFORCEMENT. (a) Subject to par. (b), any employee of a health care facility or health care provider who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of sub. (3) may file a complaint with the department under s. 106.06 (6). If the department finds that a violation of sub. (3) has been committed, the department may take such action under s. 111.39 as will effectuate the purpose of this section.

(b) Any employee of a health care facility operated by an agency, as defined in s. 111.32(6) (a), of the state who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of sub. (3) may file a complaint with the personnel commission under s.

230.45(1) (L). If the personnel commission finds that a violation of sub. (3) has been committed, the personnel commission may take such action under s. 111.39 as will effectuate the purpose of this section.

(c) Section 111.322 (2m) applies to a disciplinary action arising in connection with any proceeding under par. (a) or (b).

(5) CIVIL PENALTY. Any health care facility or health care provider and any employee of a health care facility or health care provider who takes disciplinary action against, or who threatens to take disciplinary action against, any person in violation of sub. (3) may be required to forfeit not more than \$1,000 for a first violation, not more than \$5,000 for a violation committed within 12 months of a previous violation and not more than \$10,000 for a violation committed within 12 months of 2 or more previous violations. The 12-month period shall be measured by using the dates of the violations that resulted in convictions.

(6) POSTING OF NOTICE. Each health care facility and health care provider shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form approved by the department setting forth employees' rights under this section. Any health care facility or health care provider that violates this subsection shall forfeit not more than \$100 for each offense.

SECTION 5. 230.45 (1) (L) of the statutes is created to read: 230.45 **(1)** (L) Receive complaints under s. 146.997(4) (a) of disciplinary action taken in violation of s. 146.997 (3) and, except as provided in sub. (1m), process the complaints in the same manner that employment discrimination complaints are processed under s. 111.39.

SECTION 6. Nonstatutory provisions.

(1) EMPLOYEE NOTIFICATION. Within 90 days after the effective date of this subsection, each health care facility, as defined in section 146.997 (1) (b) of the statutes, as created by this act, and each health care provider, as defined in section 146.997 (1) (c) of the statutes, as created by this act, shall inform its employees of their rights and remedies under this act.

SECTION 7. Initial applicability.

(1) COLLECTIVE BARGAINING AGREEMENTS. This act first applies to an employee of a health care facility, as defined in section 146.997 (1) (b) of the statutes, as created by this act, or of a health care provider, as defined in section 146.997 (1) (c) of the statutes, as created by this act, who is affected by a collective bargaining agreement that contains provisions inconsistent with this act on the day on which the collective bargaining agreement expires or is extended, modified or renewed, whichever occurs first.

REGULATORY DIGEST

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Telephone Directory

Automated Phone System for Acupuncture, Chiropractic, Massage therapists and Bodyworkers, Music, Art and Dance Therapists, Marriage & Family Therapists, Nursing, Optometry, Professional Counselors, Psychology, & Social Workers: (608) 266-0145

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To Request the Wisconsin Statutes and Administrative Codebook
Complaint Against Credential Holder
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Press 5 To repeat this menu or you are calling from a rotary telephone, stay on the line and your call will be answered in the order received.
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Endorsements

Requests for endorsements to other states must be in writing. The cost is \$10. Please make check or money order payable to the Department of Regulation and Licensing.

Visit the Department's Web Site

<http://www.drl.state.wi.us>

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Digests on Web Site

January, 1998; June, 1998, September, 1998, December, 1998, June, 1999, October, 1999, May, 2000.

Wisconsin Statutes and Code

Copies of the Acupuncture Advisory Committee Statutes and Administrative Code can be ordered through the Bureau Office. Include your name, address, county and a check payable to the Department of Regulation and Licensing in the amount of \$5.28. The latest edition is dated March, 2000.

Change of Name or Address?

Please photocopy the mailing label of this digest, make changes in name or address, and return it to the Department. Confirmation of changes are not automatically provided.

WIS. STATS. S. 440.11 ALLOWS FOR A \$50 PENALTY TO BE IMPOSED WHEN CHANGES ARE NOT REPORTED WITHIN 30 DAYS.